Bail Slip

The Appellant (Accused) was directing to be released on bail as per the order of this Court dated 29.3.2001 and made in Crl.MP.No.8375/2000 in Crl.A.No.1054/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2007

CORAM

THE HONOURABLE MR.JUSTICE R.REGUPATHI

CRL.A.No.1054 of 2000

Ranganathan .. Appellant/1 st Accused

Vs

State by Inspector of Police
Mechery Police Station
Salem District. .. Respondent (Complaint)
(Crime No. 114 of 89)

Appeal against the judgment of conviction and sentence dated 19.10.2000 made in S.C.No.49 of 1999 on the file of the III Additional Sessions Judge, Salem.

For Appellant : Mr.A.K.Kumaraswamy

For Respondent : Mr.N.Kumanan
Government Advocate
(Criminal side)

JUDGMENT

The appellant is the first accused and the second accused is the father of the appellant. Initially a case was registered under Section 174 of the Code of Criminal Procedure and the trial of the case was taken up under Section 302 IPC against both the accused. On conclusion of the trial, the second accused has been acquitted and the appellant alone has been convicted for an offence punishable under Sections 304 (I) and 201 IPC and sentenced to undergo imprisonment for 10 years and one year together with a fine of Rs.3,000/- and Rs.2,000/- respectively, containing a default sentence. Aggrieved against that, the present appeal has been filed by the appellant.

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2. The deceased is the wife of the appellant. The occurrence is alleged to have taken place on 1.4.1989 at about 10.00 p.m. Three years prior to the date of occurrence, the marriage between the appellant and the accused is alleged to have taken place. After the marriage, there were frequent quarrels between the appellant and the deceased. Panchayats were convened and the deceased was requested to go with the appellant. PW1, who is the father of the deceased, visited the scene of occurrence viz., the house of the appellant, after hearing the death of the deceased on 02.04.1989. At that time, the deceased was found lying dead inside the house and PW1 did not find any external injuries. But, there was froth oozing out from her mouth. Thereafter, PW1 suspecting foul play gave a report to the police.

3. PW9, the Sub Inspector of Police, Mecheri Police Station, received the complaint on 02.04.1989 at 11.00 p.m and registered a case in Crime No.114/1989 under Section 174 of the Code of Criminal Procedure and sent Ex.P.15 (copy of the FIR) to the Revenue Divisional Officer and a requisition to conduct enquiry, since the death of the deceased took place within three years after the marriage.

4. P.W.7 the RDO on receipt of the requisition from P.W.9, reached the scene of occurrence on 03.04.1989 and conducted inquest over the dead body of the deceased and examined the witnesses present. Ex.P-13 is the Inquest Report and Ex.P-14 is the Report of the RDO.

5. PW-10 the Inspector of Police, Mecheri Police Station took up the investigation on 6.4.1989 and sent a requisition for conducting post mortem. He altered the offence from 174 Cr.P.C., to Section 302 r/w 201 IPC after receiving opinion from the post mortem Doctor and sent Ex.P.16 (express report). On 7.4.1989, PW10 visited the scene of occurrence and prepared a rough sketch (Ex.P.17). The accused was produced before him on the same day and he gave a confession statement, which is marked as Ex.P.4. In pursuance of such statement, the accused produced MO1 (Mathu) a wooden stick with head portion and the same was recovered under Ex.P.5 (mahazar). The accused was remanded to judicial custody on the next day. Subsequently, investigation was taken up by PW 11 and he filed a final report, after examining the witnesses, on 24.10.1995 for an offence under Section 302 r/w 201 IPC.

6. PW1 in his evidence has stated that, there used to be quarrel between the appellant and the deceased frequently and on the advise of the panchayatars and after receiving an undertaking from the appellant, the deceased was sent back to her matrimonial home. On the date of occurrence, on receipt of the intimation that

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his daughter had committed suicide by consuming poison, PW1 went to her house. The accused alleged to have stated that she consumed poison on her own. Thereafter, suspecting some foul play, a report (Ex.P.1) was given to the police. He has further stated that he was examined by the police during investigation and by the Revenue Divisional officer.

7. PW2 is the mother of the appellant. She has been examined by the prosecution to substantiate the motive aspect of the prosecution that there was a quarrel between the appellant and the deceased. Since, she did not support the case of the prosecution, she was treated hostile. PW3 is the sister-in-law of the appellant, who has been examined by the prosecution to substantiate that she heard a noise from the house of the deceased at about 10.00 p.m on 1.4.1989. But as such, she has not supported the case of the prosecution and therefore, she was treated hostile. PW4 is a witness who has attested the mahazar for recording the statement of the accused and he was also treated hostile by the prosecution. P.W.5 is the mahazar witness for recovery of MO1 (Mathu) by PW10 pursuant to the statement given by the appellant. He supported the version given by the prosecution. PW6 is the Medical Officer, who conducted post mortem on receipt of requisition Ex.P-6 over the dead body of the deceased. On 03.04.1989 at 4.40 p.m post mortem was conducted and three injuries were found on the dead body of the deceased. Ex.P.7 is the post mortem certificate. In the certificate, the external and internal injuries have been narrated as follows:

External Injuries:

1. Contusion 7" x 3" over upper third right arm.
2. Contusion 7" x 3" over the upper third left arm.

3. Bluish discolouration 6"x 4" over the left Temple region -
extending up to the angle of the left mandible upto middle
of the occiput.
A band of bluish discolouration ½" with a groove of 1 to 2 mm
running from (just below the thyroid cartilage) and close to the angle of the left mandible across the neck in front of the middle right side of neck.

On dissection of the band the under lying tissues showed Haemorrhagic spots.

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Internal Injuries:

Neck: Contusion with haemorrhagic spots with bruise, neck muscles and tissues seen on both side of neck.
Hyoid Bone: Intact. Tracheal muscles and vessels are bruised.
Heart: 200 gms empty and flabby. C/s. Pale. Lungs: Right 400 gms, 350 gms left c/s. Pale and pulpy.
Stomach: Pale and empty.
Liver: 900 gms. Small and hard. Almost brownish black in colour -
c/s. Pale.
Spleen: Small and pulpy 90 gms. Bluish black in colour.
Kidney: weight 90 gms each pulpy.
Uterus: Normal and small- no foetus.
Bladder: empty
Skull: Membrances intact.
No Haemotoma -Liquified and pulpy- vertebra - normal - No fracture.
Viscera: Preserved
1. Stomach 2. Intestine 3. Liver 4. Kidney, one 5. Hyoid bone
6. Preservative nac (Sodium chloride)

The medical officer has opined that the death would have occurred on account of the external and internal injuries and asphyxia due to strangulation. Ex.P.12 is the questionnaire in which he has answered and opined as mentioned above. PW7, the Revenue Divisional Officer, conducted inquest over the dead body of the deceased and Ex.P.13 is the inquest report. It has been opined by the Revenue Divisional Officer that the death of the deceased is due to homicidal violence and it is not a suicidal death. PW 8 is the post mortem constable and PW9, is the Sub inspector of Police who has recorded the first information report and registered the case.

8. On conclusion of the trial, the appellant was questioned under Section 313 of the Code of Criminal Procedure, for which, the appellant denied the offence and also filed written submissions. As per his statement, the deceased was sleeping inside the house on 02.04.1989. On hearing the noise of the deceased stating that she has consumed poison, the appellant rushed to her. Neighbours also assembled. At that time, the appellant and others gave first aid immediately by giving soap water by holding her neck, since there was no facility available to take her immediately to the hospital. The deceased died after

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some time and the same was intimated to PW1. The appellant denied giving any statement to the police officer leading to the recovery of MO1.

9. The learned Trial Judge on a perusal of the oral and documentary evidence and after hearing the arguments on the side of prosecution, as well as the defence, convicted the accused as aforementioned. The present appeal has been preferred, aggrieved against the conviction and sentence.

10. Learned counsel appearing for the appellant submits that there is no eye witness for the alleged occurrence. Though P.W.3 has been cited as a witness, she has not supported the case of the prosecution and was treated hostile. Though A-2, who is the father of the appellant has been implicated as an accused, he has been acquitted by the trial Court. The mahazar witness P.W.4 examined to substantiate the arrest and recovery of the accused also turned hostile. Though P.W.1 who is the father of the deceased has been examined by the prosecution to substantiate the motive part of the case of the prosecution, his evidence cannot be used to substantiate the actual commission of the offence.

11. That the evidence of the medical officer is not corroborating the case of the prosecution. That the accused has given explanation in his 313 statement that it is the deceased who committed suicide by consuming poison and as such there is no evidence to connect the appellant with the crime. The appellant is entitled for acquittal.

12. Per contra the learned Government Advocate submits that there are positive materials through the evidence of P.W.1 to substantiate that the appellant was not leading a happy married life with the deceased. Though P.W.3 has turned hositle, the evidence of the medical officer is to the effect that the death is due to homicidal violence. Therefore the statement of the accused cannot be believed. There are injuries on the arms and the head of the deceased and further a positive opinion has been given by the medical officer that the death is due to strangulation. In such circumstances, the finding reached by the learned trial Judge need not be disturbed.

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13. I have perused the materials available on record and heard the submissions made.

14. PW1 is the father of the deceased and father-in-law of the appellant/accused. Though it has been stated in the first information report that he has received information that the deceased died due to consumption of poison, he has stated that the cause of death is unknown to him. The Panchayat was convened in

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the village and as PW1 was not convinced with the same, he has given the report (Ex.P.1) resulting in the registration of the case. In the evidence of PW1, it has been stated that such information, viz., consumption of poison by the deceased, has been conveyed to him only by the accused. PW2 to 4 turned hostile and their evidence do not advance the case of the prosecution.

15. It is the evidence of the Revenue Divisional Officer that the enquiry revealed that it is not the case of suicidal death, but it is a case of homicidal violence. On a perusal of the evidence and the opinion of the medical officer, it has been positively substantiated that the injury has been caused on the neck of the deceased and the death is due to asphyxia due to strangulation. It is not due to consumption of poison.

16. Admittedly, the occurrence took place inside the house and no other person, except the appellant was living in that house. The rough sketch prepared by the Investigating Officer goes to show that the body of the deceased was recovered from inside the house. No other witnesses, to substantiate the theory of the appellant, have been examined during the course of the trial. Though it is the case of the prosecution that the second accused (father of the appellant) also has been implicated in the offence punishable under Section 201 IPC, the allegation was not substantiated and therefore, he was acquitted.

17. In so far as the appellant is concerned, based on the evidence of PW1 and the medical officer (PW6) one can come to an irresistible conclusion that it is the appellant and the appellant alone has caused injury on the neck of the deceased on that fateful night. The opinion of the doctor is that the death could have been caused due to asphyxia due to strangulation. The motive part of the quarrel between the appellant and the deceased stands substantiated by PW1. Though there is no direct evidence for the commission of the offence, the circumstantial evidence would lead to an irresistible conclusion that the accused has committed the offence. The weapon of offence has been recovered through the statement of the accused.

18. Under such circumstances, the learned trial judge has believed the evidence of the prosecution and convicted the appellant. There is no direct evidence regarding the manner in which the offence was committed. The learned trial Judge has stated that there might have been some quarrel between the appellant and the deceased and in the course of such quarrel, the appellant, losing temper has committed the offence. Therefore, the appellant was convicted for an offence under Section 304 (I) IPC and sentenced to undergo 10 years imprisonment. He was also convicted for the offence punishable under section 201 IPC and

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sentenced to undergo rigorous Imprisonment for one year.

19. I do not find any reason to disturb the conclusion arrived at by the learned trial Judge. However, in view of the facts and circumstances of the case, as the trial judge himself has given a finding that there might have been some quarrel between the accused and the deceased, prior to the occurrence, I find that the sentence of 10 years rigorous imprisonment imposed by the trial judge may be severe and I am of the considered view that the appellant may be sentenced to undergo rigorous imprisonment for 5 years for the offence under Section 304(I) IPC. The sentence of imprisonment of one year for the offence under Section 201 IPC is confirmed. Both the sentences are ordered to run concurrently. With this modification with regard to the sentence alone, this criminal appeal is dismissed.

vj2/csh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Inspector of Police, Mechery Police Station, Salem District

2. The Public Prosecutor, High Court, Madras

3. The III Additional Sessions Judge, Salem

4. -do- Thro The Principal Sessions Judge, Salem

5. The Judicial Magistrate, No II, Mettur dam.

6. -do- Thro The Chief Judicial Magistrate, Salem.

7. The Superintendent Central Prison, Coimbatore.

8. The District Collector, Salem

9. The Director General of Police, Mylapore Chennai 4

+ 1 cc to Mr. A.K. Kumarasamy, Advocate SR No. 666

SR(CO)
SR/5.2.2007

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